

HOUSE BILL 1137

By Shipley

AN ACT to amend Tennessee Code Annotated, Title 2, Chapter 7; Title 4; Title 39; Title 40; Title 45; Title 49; Title 50, Chapter 1 and Title 55, Chapter 50, relative to enacting the "Comprehensive Illegal Immigration Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as "The Comprehensive Illegal Immigration Act".

SECTION 2. Tennessee Code Annotated, Section 40-11-118, is amended by adding a new subsection (c) and appropriately redesignating subsequent subsections accordingly:

(c) After an inquiry into the citizenship status of the defendant pursuant to § 40-7-123, if it is determined that the defendant is not lawfully present in the United States, when determining the amount of bail, there shall be a presumption that the defendant is at risk of flight.

SECTION 3. Tennessee Code Annotated, Title 40, Chapter 7, Part 1, is amended by adding a new section thereto:

§ 40-7-123.

When a person is charged with a felony or with a second or subsequent violation of driving under the influence pursuant to § 55-10-401 and is confined, for any period, in the jail of the county or any municipality, a reasonable effort shall be made to determine the citizenship status of the person so confined, including but not limited to, reviewing documents in the possession of the prisoner. If the keeper of the jail or other officer cannot determine the lawful status from the documents in the possession of the prisoner, verification shall be made within forty-eight (48) hours through a query to the Law

Enforcement Support Center of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If it is determined that the person is not lawfully present in the United States, pursuant to the federal Immigration and Naturalization Act, compiled in 8 U.S.C. § 1101 et seq., the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

SECTION 4. Tennessee Code Annotated, Section 55-50-322, is amended by adding a new subsection thereto, as follows:

(j) All written examinations administered to applicants for a driver license or intermediate driver license shall be in English.

SECTION 5. Tennessee Code Annotated, Section 4-21-401, is amended by adding at the end the following as a new subsection:

(c)

(1) Notwithstanding this chapter or title 50, it shall not be an unlawful employment practice for an employer to require an employee to speak, or an applicant for employment to agree to speak, English while engaged in work if such requirement is based on business necessity and the employer provides notice to employees of the requirement and the consequences of violating the requirement.

(2)

(A) An individual shall not be considered to be engaged in work under subdivision (c)(1) during a bona fide meal period, a rest period, or any other break, during which the individual is not required to perform any duties.

(B) In this subdivision (c)(2), the term "bona fide meal period" means such period, and the term "rest period" means such period, within the meaning of 29 C.F.R. § 785.19, or any similar regulation or ruling.

SECTION 6. Tennessee Code Annotated, Section 2-7-112(a)(1), is amended by deleting subdivision (E) in its entirety and redesignating existing subdivisions accordingly.

SECTION 7. Tennessee Code Annotated, Section 2-7-112, is amended by deleting subsection (c) in its entirety and by substituting instead the following:

(c) For purposes of comparing the person's signature on the application for ballot, "evidence of identification" shall be:

(1) A Tennessee driver license;

(2) A valid identification card issued by a branch, department, agency or entity of the state of Tennessee, any other state, or the United States authorized by law to issue personal identification, provided that such identification card contains a photograph of the voter;

(3) A valid identification card issued pursuant to § 55-50-336;

(4) A valid United States passport;

(5) A valid employee identification card issued by a branch, department, agency or entity of the state of Tennessee, any other state, or the United States authorized by law to issue personal identification, provided that such identification card contains a photograph of the voter; or

(6) A valid United States military identification card, provided that such identification card contains a photograph of the voter.

SECTION 8. Tennessee Code Annotated, Section 2-7-112, is further amended by adding a new subsection thereto, as follows:

(e) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be entitled to vote a provisional ballot under the procedures of this section. Such provisional ballot shall only be counted if the central provisional ballot counting board is able to verify current and valid identification of the voter as provided in subsection (c) and the voter has met all the requirements of provisional ballots as provided in subsection (b).

SECTION 9. Tennessee Code Annotated, Section 2-7-112, is further amended by adding a new subsection thereto, as follows:

(f) If a voter does not have any of the identification described in Section 7 and is unable to afford a valid identification card issued pursuant to § 55-50-336, such identification card shall be issued to the voter upon the voter's signing a pauper's oath. An applicant shall file an accompanying affidavit of indigency in order to have any fees waived for such identification card.

SECTION 10. Tennessee Code Annotated, Title 4, is amended by inserting sections 11 through 13 as a new, appropriately designated chapter thereto.

SECTION 11. It is the public policy of the state of Tennessee and the purpose of this chapter that all persons eighteen (18) years of age or older shall provide proof that they are lawfully present in the United States prior to the receipt of certain public benefits.

SECTION 12. As used in this chapter, unless the context otherwise requires:

(1) "Emergency medical condition" has the same meaning as provided in 42 U.S.C. § 1396b(v)(3);

(2) "Federal public benefits" has the same meaning as provided in 8 U.S.C. § 1611(c); and

(3) "State or local public benefits" has the same meaning as provided in 8 U.S.C. § 1621(c).

SECTION 13.

(a) Except as otherwise provided in this section or where exempted by federal law, on and after August 1, 2009, each agency or political subdivision of the state shall verify the lawful presence in the United States of each natural person eighteen (18) years of age or older who applies for state or local public benefits or for federal public benefits prior to providing such benefits.

(b) This section shall be enforced without regard to race, religion, gender, ethnicity or national origin.

(c) Notwithstanding the provisions of subsection (a), verification of lawful presence in the United States shall not be required:

(1) For any purpose for which lawful presence in the United States is not required by law, ordinance or rule;

(2) For obtaining health care items and services that are necessary for the treatment of an emergency medical condition of the person involved and that are not related to an organ transplant procedure;

(3) For short-term, noncash, in-kind emergency disaster relief;

(4) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(5) For prenatal care; or

(6) For services or assistance provided by public or private non-profit agencies or programs, including, but not limited to, soup kitchens, crisis counseling and intervention, and short-term shelter care, so long as such programs, services or assistance:

(A) Deliver noncash, in-kind services at the community level;

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) Are necessary for the protection of life or safety.

(d) An agency or a political subdivision shall verify the lawful presence in the United States of each applicant eighteen (18) years of age or older for federal public benefits or state or local public benefits by requiring the applicant to do both of the following:

(1) Produce one (1) of the following forms of identification:

(A) A valid Tennessee driver license;

(B) A United States military card or a military dependent's identification card;

(C) A United States coast guard merchant mariner card; or

(D) A native American tribal document; and

(2) Execute an affidavit stating that the applicant is a United States citizen or legal permanent resident or that the applicant is otherwise lawfully present in the United States pursuant to federal law.

(e) Notwithstanding the requirements of subdivision (d)(1), the commissioner of finance and administration is authorized to promulgate rules and regulations, provided such rules and regulations shall be effective only until March 1, 2010, providing for additional forms of identification or a waiver process in order to ensure that persons who are lawfully present in the United States, including homeless persons, receive benefits that they are authorized to receive. Such rules and regulations shall be promulgated as public necessity rules pursuant to § 4-5-209.

(f) A person who knowingly makes a false, fictitious or fraudulent statement or representation in an affidavit executed pursuant to this section commits the offense of aggravated perjury as defined in § 39-16-703. It shall constitute a separate violation of § 39-16-703 each time that a person receives a public benefit based upon such a statement or representation.

(g) For an applicant who has executed an affidavit stating that the applicant is an alien lawfully present in the United States, verification of lawful presence for federal public benefits or state or local public benefits shall be made through the federal systematic alien verification of entitlement program, referred to as the "SAVE program," operated by the United States department of homeland security, or a successor program designated by the United States department of homeland security. Until such verification of lawful presence is made, the affidavit may be presumed to be proof of lawful presence for purposes of this section.

(h) Each state agency or department that administers a program that provides state or local public benefits shall provide an annual report with respect to its compliance with this section to the governor and to the speakers of the senate and house of representatives no later than February 1 of each year.

SECTION 14. Tennessee Code Annotated, Title 49, Chapter 7, Part 1, is amended by adding a new section thereto:

§ 49-7-147.

(a) An individual who is not lawfully present in the United States as determined by the bureau of immigration and customs enforcement of the United States department of homeland security shall not be considered a resident of Tennessee for purposes of:

(1) Any public postsecondary education benefit, including, but not limited to, scholarships or financial aid; or

(2) Resident tuition.

(b) For purposes of this section, “public postsecondary education benefit”

means:

(1) A benefit offered by an institution operated by the board of regents of the state university and community college system; or

(2) A benefit offered by an institution in the University of Tennessee system.

SECTION 15. Tennessee Code Annotated, Title 49, Chapter 7, Part 1, is amended by adding the following new section thereto:

§ 49-7-148.

(a) Notwithstanding the provision of § 49-7-147, the Tennessee higher education commission may adopt a policy which allows a student to enroll in an institution within the University of Tennessee or Tennessee board of regents systems and allows a student to be eligible for resident tuition, if the student:

(1) Graduated from a public or private high school in this state;

and

(2) Resided in this state with a parent or legal guardian while attending classes at a public or private high school in this state for at least two (2) years prior to graduation.

(b) To be eligible for the provisions of subsection (a), an eligible student shall:

(1) Satisfy admission standards as determined by the Tennessee higher education commission for the appropriate type of institution and have secured admission to, and be enrolled in, an institution within University of Tennessee or Tennessee board of regents systems; and

(2) If the student cannot present to the institution valid documentation of United States nationality or an immigration status permitting study at a postsecondary institution:

(A) Provide to the institution a copy of a true and correct application or petition pending filed with the United States citizenship and immigration services to legalize the student's immigration status; or

(B) File an affidavit with the institution stating that the student will file an application to legalize the student's immigration status at the earliest opportunity the student is eligible to do so, but in no case later than:

(i) One (1) year after the date on which the student enrolls for study at the institution; or

(ii) If there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one (1) year after the date the United States citizenship and immigration services provide such a formal process; and

(C) If the student files an affidavit pursuant to subdivision (b)(2)(B), present to the institution a copy of a true and correct application or petition filed with the United States citizenship and immigration services no later than:

(i) One (1) year after the date on which the student enrolls for study at the institution; or

(ii) If there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one (1) year after the date the United States citizenship and immigration services provide such a formal process, which copy shall be maintained in the institution's records for that student.

(c) Any student who completes the required criteria prescribed in subsections (a) and (b) shall not be disqualified on the basis of the student's immigration status from any scholarships or financial aid provided by this state.

(d) This section shall not impose any additional conditions to maintain resident tuition status at a postsecondary educational institution within the University of Tennessee or Tennessee board of regents systems on a student who was enrolled in a degree program and first received such resident tuition status at that institution during the 2009-2010 school year or any prior year.

SECTION 16. Tennessee Code Annotated, Title 50, Chapter 1, is amended by inserting sections 17 through 21 below as a new, appropriately designated part thereto.

SECTION 17. As used in this part, unless the context otherwise requires:

(1) "Basic pilot program" means the federal electronic work authorization verification service provided by the United States department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003;

(2) "Employee" means an individual performing or applying for work or service of any kind or character for hire;

(3) "Employer" means a person employing or seeking to employ any individual for hire;

(4) "Employment" means the act of employing or the state of being employed, engaged, or hired;

(5) "State" means any of the following of the state:

- (A) A department;
- (B) A division;
- (C) A commission;
- (D) A council;
- (E) A board;
- (F) A bureau;
- (G) A committee;
- (H) An institution;
- (I) An authority;
- (J) The general assembly;
- (K) The judiciary;
- (L) A government corporation; or
- (M) Other establishment, official, or employee.

SECTION 18. On and after August 1, 2009, any employer in this state, including the state or a political subdivision of the state, prior to hiring any employee shall verify the employment eligibility of the employee by participating in the basic verification pilot program. Each such employer shall maintain a copy of documentation verifying the eligibility of the applicant for a period of no less than three (3) years.

SECTION 19. On and after August 1, 2009, the state shall require any bid proposal submitted as a response to a request for proposals to procure supplies, services, and construction needed by the state to include a copy of the documentation required to be maintained pursuant to this part, or a signed and sworn affidavit attesting that the person

submitting the bid proposal has complied with the requirements of this part, along with such bid proposal.

SECTION 20. The commissioner of the department of labor and workforce development is authorized to promulgate rules and regulations to enforce the provisions of this part in the commissioner's discretion. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 21. This part shall be interpreted so as to be fully consistent with all federal immigration and labor laws and all state labor laws.

SECTION 22. Tennessee Code Annotated, Section 39-17-114, is amended by deleting the section in its entirety and substituting instead the following:

(a) It is an offense for any person for the purpose of commercial advantage or private financial gain to transport or cause to be transported into the state an individual who the person knows or should have known has illegally entered or remained in the United States, as determined by the bureau of immigration and customs enforcement of the United States department of homeland security.

(b)

(1) Subsection (a) shall not apply to common carriers.

(2) It is a defense to prosecution under subsection (a) that the individuals were being transported for religious purposes.

(c) It is an offense for any person to shelter from detection any alien in any place within this state knowing that the alien has come to, entered or remained in the United States in violation of federal law.

(d) For purposes of subsection (c):

(1) "Knowing" means having actual knowledge of or acting with deliberate ignorance or reckless disregard that the alien has come to, entered or remained in the United States in violation of federal law;

(2) "Shelter from detection" includes, but is not limited to, leasing or renting a dwelling or business.

(e)

(1) A violation of subsection (a) is a Class A misdemeanor punishable only by a fine of one thousand dollars (\$1,000) for each person illegally transported.

(2) A violation of subsection (c) is a Class A misdemeanor punishable only by a fine of five hundred dollars (\$500) for each day the dwelling or business was leased or rented by the alien.

(f) Any moneys received from a violation of this section shall go to the arresting agency or agencies.

SECTION 23. Tennessee Code Annotated, Section 39-14-150, is amended by deleting subsections (b) through (e) in their entirety and substituting instead the following:

(b) A person commits the offense of identity theft who knowingly obtains, possesses, buys, or uses, the personal identifying information of another:

(1) With the intent to commit any unlawful act including, but not limited to, obtaining or attempting to obtain credit, goods, services, employment or medical information in the name of such other person; and

(2)

(A) Without the consent of such other person; or

(B) Without the lawful authority to obtain, possess, buy or use that identifying information.

(3) For purposes of the offense of identity theft, an activity involving a possession, use or transfer that is permitted by the Tennessee Financial Records Privacy Act, codified in title 45, chapter 10; Title V of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102; or the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactional Act, (15 U.S.C. § 1681 et seq.) shall not be considered an "unlawful act".

(c)

(1) A person commits the offense of identity theft trafficking who knowingly sells, transfers, gives, trades, loans or delivers, or possesses with the intent to sell, transfer, give, trade, loan or deliver, the personal identifying information of another:

(A) With the intent that the information be used by someone else to commit any unlawful act including, but not limited to, obtaining or attempting to obtain credit, goods, services, employment or medical information in the name of the other person; or

(B) Under circumstances such that the person should have known that the identifying information would be used by someone else to commit any unlawful act including, but not limited to, obtaining or attempting to obtain credit, goods, services, employment or medical information in the name of the other person; and

(C) The person does not have the consent of the person who is identified by the information to sell, transfer, give, trade, loan or deliver, or possess with the intent to sell, transfer, give, trade, loan or deliver, that information; and

(D) The person does not have lawful authority to sell, transfer, give, trade, loan or deliver, or possess with the intent to sell, transfer, give, loan or deliver, the personal identifying information.

(2) For purposes of the offense of identity theft trafficking, an activity involving a possession, use or transfer that is permitted by the Tennessee Financial Records Privacy Act, codified in title 45, chapter 10; Title V of the Gramm-Leach-Bliley Act, Pub. L. No. 106-102; or the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactional Act, (15 U.S.C. § 1681 et seq.) shall not be considered an "unlawful act".

(d) In a prosecution under subsection (c), the trier of fact may infer from the defendant's simultaneous possession of the personal identifying information of five (5) or more different individuals that the defendant possessed the personal identifying information with the intent to sell, transfer, give, trade, loan or deliver the information. However, if the defendant had the consent of one (1) or more of the individuals to possess the personal identifying information of that individual, the consenting individual shall not be counted in determining whether an inference of possession for sale may be drawn by the trier of fact.

(e)

(1) As used in subsections (a) through (e) of this section:

(A) "Employment" means any work engaged in for compensation in money or other valuable consideration and for which a person paying the compensation for the work performed would be required to file a W-2 wage and tax statement with the federal internal revenue service; and

(B) "Personal identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a living, dead or fictitious individual, including:

(i) Name, social security number, date of birth, official state or government issued driver license or identification number, alien registration number, passport number, employer or taxpayer identification number;

(ii) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(iii) Unique electronic identification number, address, routing code or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data; or

(iv) Telecommunication identifying information or access device.

(2)

(A) For purposes of subsections (b) and (c), when "other person" is used, it shall include any living, dead or fictitious person.

(B) For purposes of subdivision (b)(2)(A) and (c)(1)(C), a person has not given consent if the person is no longer living and prior to such person's death, the person did not give consent, or the person is a fictitious person.

SECTION 24. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 25. This act shall take effect July 1, 2009, the public welfare requiring it.